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TANGGUNG GUGAT BADAN PERWAKILAN DESA DALAM SISTEM PERADILAN DI INDONESIA

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Intisari

Isu sentral dalam penelitian tesis ini, yaitu "ketidak jelasan tanggung gugat Badan Perwakilan Desa dalam sistem peradilan di Indonesia", yang kemudian diungkapkan dalam judul penelitian tesis ini Tanggung Gugat Badan Perwakilan Desa dalam sistem peradilan di Indonesia, isu sentral tersebut mengandung berbagai permasalahan yakni permasalahan hukum empiris, yaitu bagaimanakah realisasi implementasi tanggung gugat BPD; Permasalahan hukum normatif pada lapisan hukum, yaitu apakah eksistensi pranata hukum yang mengatur tanggung gugat BPD telah sesuai dengan sistem peradilan di Indonesia; Permasalahan hukum normatif pada lapisan teori hukum, yaitu perlukah tanggung gugat BPD diatur sendiri dalam peraturan daerah.

Metode penelitian yang digunakan merupakan kombinasi antara penelitian hukum empiris dan penelitian hukum normatif. Tipe penelitian hukum empiris dilakukan dengan cara wawancara mendalam dan observasi, data yang terkumpul dianalisis secara kualitatif. Tipe penelitian hukum normatif, bahan hukum yang terkumpul dianalisis secara normatif, pendekatannya dapat digunakan beberapa model, antara lain : pendekatan histories, pendekatan komparatif, pendekatan peraturan perundang-undangan dan pendekatan konseptual. Masing-masing pendekatan dipergunakan sesuai dengan kebutuhannya.

Hasil penelitian dan pembahasan adalah sebagai berikut : BPD lebih terkesan sebagai lembaga legislatif dengan demikian BPD tidak dapat dipertanggug jawabkan dan dipertanggung gugatkan melalui TUN. KedudukanBPD sebagai lembaga legislatif maka BPD sebagai badan hukum publik yang dipertanggung jawabkan dan dipertanggung gugatkan melalui peradilan umum, pranata tanggung gugat BPD di Kabupaten Tegal berupa pranata hukum keperdataan. Dengan demikian tanggung jawab dan tanggung gugat BPD tunduk pada pranata hukum sesuai dengan sub sistem peradilan di Indonesia, dan BPD sebagai badan hukum publik, kedudukannya sejajar dengan badan-badan hukum lainnya. Dengan demikian tanggung jawab dan tanggung gugat BPD tidak perlu diatur tersendiri dalam bentuk perda.

Berdasarkan hasil penelitian diatas, disarankan agar pemerintah Kabupaten Tegal : dalam merencanakan produk-produk hukum daerah berkaitan dengan BPD, seyogyanya tidak bertentangan dengan pranata hukum pertanggung jawaban dan pertanggung gugatan BPD, dalam membuat pranata hukum yang menegaskan bahwa BPD adalah sebagai badan legislatif bukanlah sebagai badan TUN, tidak mengatur tersendiri mengenai tanggung jawab dan tanggung gugat BPD.

Kata Kunci : Tanggung gugat BPD dan Sistem Peradilan di Indonesia

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Liability Of Village-Level Legislature In The Legal Justice System In Indonesia

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Abstract

The central issue in the following research is the absence of clarity related to legal responsibility and liability of village-level legislature in the legal justice system in Indonesia. Legal issues raised are namely, as an empirical legal issue, how the real implementation of liability and responsibility of village-level legislature is; and as a normative legal issue of normative layer, whether the existence of regulations concerning legal liability and responsibility has been in consistence with the Indonesian legal justice system. In addition, the normative legal issue of legal theory layer raised is whether the liability of village-level legislature needs to be regulated in a specific and separate local government regulation.

The research method applied was a combination of empirical legal research and normative one. The empirical legal research was conducted by thorough interview and observation, and the data collected were qualitatively analyzed. Meanwhile, the normative legal research was conducted through collecting legal materials, and they were normatively analyzed. The approaches used were, among others, historical, comparative, regulative and conceptual ones; each of which was appropriately applied.

The research finding showed that the village-level legislature acted more like legislative body, so that the village-level legislature could not be made responsible and liable before administrative court. The legal status of village-level legislature as a legislative body made the legislature a public legal body which could be made responsible and liable through district court. Legal instrument for liability of village-level legislature in Tegal Regency was civil law instrument. In this regard, the responsibility or liability of village-level legislature was subject to regulations which were consistent with sub-system of legal justice in Indonesia. And as a public legal body, its legal status was in line with other legal bodies. Therefore, there was no need to govern village-level legislature in a specific and separate local government regulation.

With regard to the above-mentioned research finding, it is necessary that in drafting legal products related to village-level legislature, the Government of Tegal Regency be not against laws and regulations concerning responsibility or liability of village-level legislature, and promulgate regulation stipulating that village-level legislature is a legislative body, instead of administrative body. In addition, its responsibility or liability should not be governed in a specific and separate regulation.

Keywords: legal liability of village-level legislature, legal justice system in Indonesia

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